

9 FAM 40.8

NOTES

(CT:VISA-2069; 02-27-2014)
(Office of Origin: CA/VO/L/R)

9 FAM 40.8 N1 BACKGROUND ON 212(F)

(CT:VISA-2069; 02-27-2014)

- a. A complete list of Presidential Proclamations may be found on the Consular Affairs website. All FAM guidance on implementing these presidential proclamations will be covered in these Notes and associated Procedural Notes.
- b. Section 212(f) of the Immigration and Nationality Act ("INA") authorizes the President to suspend entry into the United States of "any aliens or any class of aliens" or to "impose on the entry of aliens any restrictions he may deem appropriate" for such period as he shall deem necessary upon determining that their entry "would be detrimental to the interests of the United States."
- c. The President exercises this authority by issuing a Presidential Proclamation ("PP") barring certain aliens or a class of aliens ineligible for entry into the United States or imposing appropriate restrictions on their entry.
- d. A Presidential Proclamation typically grants the Secretary of State authority to identify individuals covered by the presidential proclamation and waive its application for foreign policy or other national interests.
- e. Some Presidential Proclamations bar entry based on affiliation, such as:
 - (1) PP 7062 (suspends the entry of "members of the military junta in Sierra Leone and members of their families"); and
 - (2) PP 6958 (suspends the entry of "members of the Government of Sudan, officials of that Government, and members of the Sudanese armed forces").
- f. Other Presidential Proclamations suspend the entry of persons based on objectionable conduct. Examples include:
 - (1) PP 7524 (suspends the entry of "persons responsible for actions that threaten Zimbabwe's democratic institutions and transition to multi-party democracy"); and
 - (2) PP 7750 (suspends the entry of certain "persons engaged in or benefitting from corruption").
- g. Aliens who have engaged in conduct covered by a Presidential Proclamation

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 9
Visas

issued under the authority of section 212(f) may also be inadmissible under other sections of the INA or other statutes. These statutory inadmissibilities are to be considered prior to determining whether a Presidential Proclamation applies. For example, an alien believed to have engaged in public corruption covered by PP 7750, but who also has one or more criminal convictions making him ineligible under INA 212(a)(2) would be denied under the latter authority.

9 FAM 40.8 N2 INA 212(F) PRESIDENTIAL PROCLAMATION 8697

(CT:VISA-2069; 02-27-2014)

- a. On August 4, 2011, President Obama issued Presidential Proclamation 8697 on the Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses. See the full text at PP 8697. Again, please see CA Web for a list of all Presidential Proclamations.
- b. PP 8697 generally covers the following classes of persons:
 - (1) Any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, widespread or systematic violence against any civilian population based in whole or in part on race, color, descent, sex, disability, membership in an indigenous group, language, religion, political opinion, national origin, ethnicity, membership in a particular social group, birth, or sexual orientation or gender identity, or who attempted or conspired to do so. (See N2.1 below on definitions)
 - (2) Any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, war crimes, crimes against humanity, or other serious violations of human rights, or who attempted or conspired to do so. (See N2.1 definitions)
- c. **PP 8697 does not apply to an alien if** the Secretary determines that the individual's particular entry either would not harm U.S. foreign relations interests or would be in the interests of the United States. This latter determination is to be made in consultation with the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security.

9 FAM 40.8 N2.1 Definitions

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NOTE: The definitions below were developed to help you determine whether an alien's conduct falls within the scope of PP 8697; they do not represent a definitive

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statement of the Department's views on these issues under international or domestic law.

a. Widespread or Systematic Violence

- (1) "Widespread" violence can be characterized by its extensive nature. Factors in assessing whether violence was widespread could include the number of victims or locations, and the number, type, or frequency of violent incidents involved.
- (2) "Systematic" violence can be characterized by a pattern, policy, or plan, such as an organized nature to the violence in question.

Note: "Widespread or Systematic Violence," like "Other Serious Violations of Human Rights" (see (b)(3) below), does not require contextual determinations regarding the existence of an "armed conflict" or "state or organizational policies." To the extent that certain acts meet this definition, it is not necessary to determine whether they also or independently meet the definitions in section (b)(1) or (b)(2) below.

b. War Crimes, Crimes Against Humanity, or Other Serious Violations of Human Rights

- (1) The term "war crimes" refers to serious violations of the laws of war committed by, or conspired, attempted, or ordered to be committed by, any person (civilian or military). War crimes only occur in the context of armed conflict. Internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature generally are not considered "armed conflicts" in this context. The following acts may be examples of "war crimes" (see also, the War Crimes Act, 18 U.S.C. 2441):

(a) Grave breaches of the Geneva Conventions of August 12, 1949, which include any of the following acts against persons (e.g., civilians, detainees, wounded combatants) or property protected under the Geneva Conventions:

- (i) Willful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Willfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of the hostile Power;
- (vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 9

Visas

- (vii) Unlawful deportation or transfer or unlawful confinement of a protected person;
- (viii) Taking of hostages.
- (b) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided that these buildings are not military objectives;
- (c) Intentionally directing attacks against the civilian population as such or against individual civilians or civilian objects (objects that are not military objectives);
- (d) Rape, sexual assault, sexual slavery, or sexual abuse;
- (e) Making use of poison, such as poisoning wells or streams;
- (f) Maltreatment of dead bodies;
- (g) Purposeless destruction, such as firing on civilian localities that are undefended and without military significance;
- (h) Misuse of a flag of truce (e.g., a person using a flag of truce to feign an intention to surrender when there is no such intention);
- (i) Misuse of the Red Cross emblem (e.g., a person using a red cross to attempt to shield a building from attack when the building is actually being used for military purposes and may lawfully be attacked);
- (j) Pillage (i.e., a commander forcibly taking an enemy civilian's private property for private or personal use without any military necessity nor other proper legal authorization);
- (k) Summarily executing detainees without trial;
- (l) Declaring that no quarter shall be given (i.e., a commander directing his forces not to accept any surrender from the enemy and instead to execute summarily captured enemy persons who have surrendered);
- (m) Using measures of intimidation or of terrorism against the civilian population;
- (n) Intentionally directing attacks against non-combatant personnel, installations or vehicles used in humanitarian assistance or in peacekeeping missions;
- (o) Subjecting persons who are in the power of an adverse party to physical mutilation or scientific experiments;
- (p) Using human shields;
- (q) Ordering the displacement of the civilian population unless the security of the civilians involved or imperative military reasons so demand;
- (r) Conscripting or enlisting children under the age of fifteen years into

UNCLASSIFIED (U)

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U.S. Department of State Foreign Affairs Manual Volume 9

Visas

the national armed forces or armed groups or using them to participate actively in hostilities.

- (2) "Crimes against humanity" are generally characterized by certain acts that are committed as part of a widespread and systematic attack, as defined in (a) above, directed against a civilian population, where the attack is pursuant to or in furtherance of a state or organizational policy to commit such an attack.
 - (a) The act itself must be committed with knowledge of the larger attack (e.g., the act must be committed under circumstances in which the perpetrator knew of the attack and was aware of the connection between his or her act and the attack).
 - (b) The attack need not amount to, or occur in the context of, an armed conflict.
 - (c) The types of acts that can amount to crimes against humanity when committed in the circumstances described above in section 2 and 2(a) include:
 - (i) Murder;
 - (ii) Extermination;
 - (iii) Enslavement;
 - (iv) Deportation or forcible transfer of a civilian population;
 - (v) Imprisonment or other severe deprivation of physical liberty;
 - (vi) Torture;
 - (vii) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (viii) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, or gender grounds;
 - (ix) Enforced disappearances of persons;
 - (x) Apartheid;
 - (xi) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
- (3) "Other Serious Violations of Human Rights" do not need to be committed within the context of a widespread and systematic attack or an armed conflict. They include:
 - (a) acts of slavery, the slave trade, and genocide regardless of who commits the acts; and

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Visas

(b) the following and similar types of acts when committed under color of authority whether at a national, state, provincial, local or municipal level of government:

- (i) Torture or cruel, inhuman or degrading treatment or punishment;
- (ii) Prolonged arbitrary detention;
- (iii) Enforced disappearance of a person;
- (iv) Arbitrary or extrajudicial killings and other flagrant denial of the right to life, liberty or security of a person;
- (v) Rape, enforced prostitution, forced pregnancy, forced abortion, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (vi) Abuse of prisoners and detainees;
- (vii) Arbitrary imprisonment for political motives;
- (viii) Forced labor;
- (ix) Egregious suppression, meaning "to put down [by force or otherwise], to subdue, quell or crush," of a person's right to freedom of opinion, belief, expression or association (suppression here covers actions that are more extreme and serious rather than any action that somehow interferes with someone's rights);
- (x) Unlawful recruitment into or use of children in armed forces or armed groups;
- (xi) Apartheid or systematic racial discrimination;
- (xii) Systematic discrimination against or persecution of members of any identifiable group based in whole or in part on race, color, descent, sex, disability, membership in an indigenous group, language, religion, political opinion, national origin, ethnicity, membership in a particular social group, birth or sexual orientation or gender identity.

Discrimination based on "birth," as used here, refers to discrimination against someone because he or she was born out of wedlock, born of stateless parents, was adopted, or is part of a family including such persons. It also could involve discrimination because of descent, especially on the basis of caste and analogous systems of inherited status.

- (4) "Command responsibility" can refer to the responsibility of a military commander, a person effectively acting as a military commander, or other superiors that exercise effective control over their subordinates for any of the acts referred to above committed by a subordinate. Command

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U.S. Department of State Foreign Affairs Manual Volume 9

Visas

responsibility exists in circumstances in which the commander knew or should have known that the subordinate was about to commit such acts or was in the process of committing or had committed such acts, and the commander failed to take the necessary and reasonable measures to prevent such acts, to halt such acts, and/or to punish the perpetrators. The commander need not have exercised formal supervisory authority; however, he or she must have exercised effective control over the subordinate, including the power to prevent and punish the prohibited acts of persons under his or her control, in order to be held responsible on this basis.